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No. 529

In the Supreme Court of the United States

OCTOBER TERM, 1930

LAURA H. JENNINGS, AS EXECUTRIX OF THE LAST WILL AND TESTAMENT OF FREDERICK B. JENNINGS, DECEASED, PETITIONER,

v.

CHARLES W. ANDERSON, INDIVIDUALLY AND AS UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE THIRD DISTRICT OF NEW YORK.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE RESPONDENT

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MEMORANDUM FOR THE RESPONDENT

The United States does not oppose the petition in this case.

The question presented is whether Section 611 of the Revenue Act of 1928, c. 852, 45 Stat. 791, 875, should be construed to deprive the petitioner of the right which she otherwise would have had to recover taxes which had been collected after the statutory period of limitations had expired, and if so construed, whether it violates the Fifth Amendment.

This question is the same as that involved in *Graham and Foster, Co-partners, etc.*, v. *Goodcell, Collector*, No. 36, October Term, 1930, certiorari granted March 3, 1930; *Magee* v. *United States*, No. 65, October Term, 1930, certiorari granted May 19, 1930; *Oak Worsted Mills* v. *United States*, No. 104, October Term, 1930, certiorari granted June 2, 1930; *Taft Woolen Company* v. *United States*, No. 105, October Term, 1930, certiorari granted June 2, 1930; *Second National Bank of Saginaw* v. *United States*, No. 323, October Term, 1930, certiorari granted October 20, 1930; *Boston Pressed Metal Co.* v. *United States*, No. 337, October Term, 1930, certiorari granted October 20, 1930; and *Daniel Reeves, Inc.*, v. *Anderson, Collector*, No. 433, October Term, 1930, certiorari granted October 20, 1930. The facts are substantially the same in the instant case as in those cases. In the instant case the suit was brought before the passage of the Revenue Act of 1928.

The pertinent dates in the instant case are as follows (R. 36–38):

March 15, 1919, return for 1918 filed.

February 8, 1924, assessment of additional tax.

February 25, 1924, claim in abatement filed.

March 15, 1924, expiration of five-year period for assessment and collection of tax.

August 14, 1924, claim in abatement rejected.

July 30, 1925, additional tax paid.

September 19, 1925, claim for refund filed.

May 13, 1926, claim for refund rejected.

December 6, 1927, suit commenced.

The District Court for the Southern District of New York entered judgment on a directed verdict in favor of the petitioner. (R. 31–32.) The United States Circuit Court of Appeals for the Second Circuit reversed the judgment of the District Court and remanded the cause for a new trial (R. 56), following its decision in *Daniel Reeves, Inc.*, v. *Anderson, supra.* (R. 55.)

The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

Since the same question is already before this Court in several pending cases, the United States does not oppose the granting of the writ of certiorari.

Respectfully submitted.

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